

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.11.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.349 of 2017 and
C.M.P.No.5376 of 2017

Bharat Petroleum Corporation Ltd.,
A Government of India Enterprise
Rep. by its Territory Manager (LPG)
Post Box No.1644, Peelamedu
Coimbatore 641 004. ...Appellant

Vs

S.Raja RajeswariRespondent

Prayer:- Writ Appeal filed under clause 15 of Letters Patent,
against the order made in W.P.No.33433 of 2016 dated 03.02.2017.

Prayer in WP.33433/2016: Petition filed under Article 226 of the
Constitution of India praying for a Writ of Certiorarified
mandamus Calling for the entire records relating to the impugned
order of the respondent made in 9.9.2016 in Ref. CBE.LPG.
Saravanampatty and quash the same and consequently direct the
respondent to grant LPG dealership at Saravanampatty Area,
Coimbatore to the petitioner herein.

For Appellant : Mr.M.Vijayan
for M/s.King and Partridge

For Respondent : Mr.Venkatachalapathy
Senior Counsel for
Mr.M.Sriram

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J U D G M E N T

K.K. SASIDHARAN, J.

Introduction:

The respondent, without disclosing the fact that she is not
in possession of the land meeting the minimum dimension of 25 M
x 30 M submitted application for LPG distributorship claiming
that she is in possession of the required land and ultimately,

she was selected. The Field verification conducted by the appellant revealed that the respondent was not in possession of the required land, resulting in cancelling her selection. The writ petition filed by the respondent was allowed by the learned single Judge on the ground that the deficiency was only 3 feet of land and the sister-in-law of the respondent by way of an undertaking agreed to give the balance land by way of a notarized affidavit, which was followed by a registered settlement deed thereafter, notwithstanding the fact that no such undertaking was produced along with the application and no reference was made in the application. Feeling aggrieved by the order allowing the writ petition, Bharat Petroleum Corporation Limited, is before this Court.

Brief Facts

2. The appellant issued an advertisement dated 21 September, 2013 calling for applications for appointment as LPG Distributorship. The respondent submitted application for the Distributorship at Saravanampatti, Coimbatore under open category. There was a requirement that the applicant must possess a plot of land of minimum dimension of 25 M x 30 M either owned or taken on lease. The land should be within 15 km from the advertised location. The respondent claimed that she was in possession of a plot of land with a dimension of 25 M x 35 M for construction of godown. The application submitted by the respondent was taken on file along with other applications and on the basis of the relevant information, her name was included in the list of eligible applicants. The appellant conducted a draw and the respondent came out successful. Thereafter, field verification was conducted. It was found that that the plot of land offered by the respondent was having the dimension of 24.68 M x 50.90 M only as against the required dimension of 25 M x 30 M. The appellant called upon the respondent to submit documents relating to the alternative land with proof that she was in possession of the said land as on the date on which application was submitted or last date of submission of application. The respondent submitted a notarized affidavit dated 2 September, 2013 executed by her sister-in-law along with her explanation and claimed that sister-in-law agreed to give an extent of 3 feet x 167 feet in favour of her husband and in case, the said land is added, it would satisfy the requirement. Since the respondent was not in possession of the entire extent of land as indicated in her application, which was a mandatory requirement, the appellant cancelled her selection, which was set aside by the learned single Judge.

Submissions

3. The learned counsel for the appellant contended that the respondent was in the know of things with respect to the actual measurement of the plot in the name of her husband. The respondent claimed that she is in possession of the land having

dimension of 25 M x 35 M notwithstanding the fact that it lacked the required measurement. The learned counsel submitted that the respondent agreed for cancellation of the selection, in case, it is found that the information was not given correctly. The learned counsel further contended that the respondent was not in possession of the plot with a dimension of 25 M x 30 M as on the last date of submission of application and as such, her selection was rightly cancelled.

4. The learned Senior Counsel for the respondent by placing reliance on the rules and regulations governing the grant of LPG Distributorship submitted that it would suffice in case the family is in possession of the required land. According to the learned Senior Counsel, in case, the land belongs to the family, consent of the family member is sufficient. The learned Senior Counsel contended that the sister-in-law of the respondent agreed to give the remaining land and she has also given her consent by way of a notarized affidavit, which was produced before the Corporation. The learned Senior Counsel further contended that the difference is only 3 feet and as such, the appellant was not correct in cancelling the appointment on the ground that the required land was not available.

Discussion

5. The appellant, by issuing an advertisement called for applications for appointment as LPG Distributorship at Saravanampatti in the district of Coimbatore. As per the Notification, the applicant must be in possession of a plot of land with a dimension of 25 M x 30 M and should produce documents relating to the land taking into account the last date for submission of application as the cut off date. There was a specific condition that the date of document of land for the godown should be on or before the last date for submission of application and the same will be verified during field inspection. The ownership of the land is not a mandatory requirement. Even a registered lease would satisfy the requirement.

6. The respondent claimed that she was in possession of the land with a dimension of 25 M x 35 m. The respondent, in her application submitted that the land is owned by her husband Thiru.T.J.Sinthu Vikram. She signed a declaration that if it is found that the information given by her is incorrect or false at any point of time, it would result in cancellation of distributorship by the appellant.

7. The appellant shortlisted the candidates on the basis of the information furnished by them. The name of the respondent was included in the shortlisted candidates. It was followed by drawal of lots. The respondent came out successful. Thereafter,

field verification was conducted. It was found that the respondent was not in possession of the plot of land with dimension of 25 M x 35 M as claimed by her. The land, as per the registered document produced by the respondent was only 24.68 M as against the required dimension of 25 M.

8. The appellant, by communication dated 21 July, 2016 informed the respondent that the dimension is only 24.68 M as against 25 M and as such, called upon her to produce documents relating to another plot of land subject to the condition that it should be in her ownership or possession as on the last date of submission of application.

9. The respondent along with her reply submitted the affidavit sworn to by her sister-in-law agreeing to give the land on lease. The explanation was not accepted by the appellant on the ground that the respondent was not in possession of the required land as on the last date of submission of application.

10. Before the learned single Judge, the respondent projected as if even at the time of submission of application, her sister-in-law has given Notarized undertaking to convey the 3 feet of land in her favour. However, the fact remains that no such undertaking was produced along with the application form. This position is confirmed by the appellant. The information furnished by the respondent in her application also would make the position very clear that no such undertaking was given by her sister-in-law regarding conveyance of 3 feet of land in favour of the respondent. The respondent, in Column No.9 of the application stated that the land belongs to her husband Thiru.T.J.Sinthu Vikram. There is no mention in the said column that her sister-in-law by name J.Selva Sangeetha has given a lease of the remaining land so as to make out the deficiency.

11. The respondent in her application stated that she was in possession of a plot of land with a dimension 25 M x 35 M. The settlement deed in favour of her husband contains all the sides measurement. The respondent would be justified in her contention, in case, side measurements are not given in the document and only the total extent is indicated. Since measurement of all the four sides were indicated in the document, the respondent was aware as on the date on which she made the application that she was not having the plot of land with dimension 25 M x 30 M and it was only 24.68 M. Therefore, the appellant is correct in the contention that there was suppression of material particulars.

12. The learned single Judge proceeded as if there was substantial compliance. The LPG Distributorship is a state largesse. Applications of others were rejected on the ground of non-possession of the required land. In case, time is given, several other candidates would have procured the land. The cut off date is prescribed in the application with a specific purpose. The applicants should meet the eligibility criteria as on the last date of submission of application. The claim made by the respondent that she was in possession of the plot of land with dimension 25 M x 35 M alone made the appellant to include her name in the list of eligible candidates. In the subsequent field verification, it was found that the claim was not bonafide and that she was not in possession of the required land.

13. The settlement deed executed by the sister-in-law of the respondent dated 27 July 2016 in favour of her husband has nothing to do with the issue raised in this intra court appeal. The material date is the last date of submission of application. The Notarized affidavit of undertaking was submitted to the appellant only with the explanation dated 28 July 2016. It was clearly an after thought to fill up the lacuna. The respondent must plead and prove that she was in possession of the required land as on the date on which the application was made or at least as on the last date of submission of application. The respondent knowing fully well that she was not in possession of the plot of land with a dimension 25 M x 30 M submitted application claiming that she was in possession of 25 M x 35 M of plot of land. The respondent has also sworn to an affidavit that in case it is found that the information is incorrect, the appellant would be at liberty to cancel the selection. Since the claim made by the respondent with regard to the plot in her possession was found incorrect, the appellant was justified in cancelling the selection.

14. The learned counsel for the appellant placed reliance on the judgment of the Hon'ble Supreme Court in the case of Bharat Petroleum Corporation Ltd. v. Swapnil Singh (Civil Appeal Nos.6928 and 6929 of 2015, dated 8 September, 2015). The Supreme Court, in the said case found that the lease deed came into existence only subsequently and as such, the applicant failed to prove that she was in possession of the required land as on the date of her application. The Supreme Court allowed the appeal filed by the Petroleum Corporation and set aside the order passed by the Division Bench of the Calcutta High Court. The material fact that the candidate was not in possession of the required land as on the date on which she made the application made the Hon'ble Supreme Court to allow the appeal in favour of Bharat Petroleum Corporation Limited.

15. In the subject case, the respondent was having the plot

of land. However, it was not the required extent. The appellant was therefore correct in its contention that it was nothing but suppression of material particulars and the same would result in withdrawal of offer of appointment.

16. The learned single Judge without reference to the mandatory conditions of the notification allowed the writ petition filed by the respondent. We are therefore of the view that the order passed by the writ court deserves to be set aside.

17. The order dated 3 February, 2017 is set aside. The writ petition in W.P.No.33433 of 2016 is dismissed.

18. In the up shot, we allow the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

svki

TO

The Territory Manager (LPG)
Bharat Petroleum Corporation Ltd.,
A Government of India Enterprise
Post Box No.1644, Peelamedu
Coimbatore 641 004.

+1cc to Mr.King & Patridge, Advocate SR.No.79703
+1cc to Mr.M.Sriram, Advocate SR.No.79445

PPA(CO)
GN(12/01/2018)

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